

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**COMMONWEALTH OF  
PENNSYLVANIA,**

**Plaintiff,**

**v.**

**Civil Action No. 2:17-cv-04540 (WB)**

**DONALD J. TRUMP, et al.,**

**Defendants.**

**MOTION OF AMERICAN CENTER FOR LAW & JUSTICE FOR LEAVE TO FILE  
AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

The American Center for Law & Justice ("ACLJ") respectfully moves the Court for leave to file the attached *amicus curiae* brief in support of Defendants' Opposition to Plaintiff's Motion for a Preliminary Injunction, ECF Doc. 9. Plaintiff has consented to the filing of this brief. Defendants stated that they take no position regarding the filing of this brief.

In support of this Motion, ACLJ states as follows:

1. The ACLJ is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have argued before the Supreme Court of the United States in a number of significant cases involving the freedoms of speech and religion.<sup>1</sup> In addition, the ACLJ represented thirty-two individuals and for-profit corporations in seven legal actions against the federal

---

<sup>1</sup> See, e.g., *Pleasant Grove v. Summum*, 555 U.S. 460 (2009) (holding that the government is not required to accept counter-monuments when it displays a war memorial or Ten Commandments monument); *McConnell v. FEC*, 540 U.S. 93 (2003) (holding that minors have First Amendment rights); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993) (holding that denying a church access to public school premises to show a film series violated the First Amendment); *Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990) (holding that allowing a student Bible club to meet on a public school's campus did not violate the Establishment Clause); *Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569 (1987) (striking down an airport's ban on First Amendment activities).

government's contraceptive services mandate ("Mandate").<sup>2</sup> The ACLJ also submitted amicus briefs with the U.S. Supreme Court in support of petitioners in both *Hobby Lobby v. Burwell*, 134 S. Ct. 2751 (2014) and *Zubik v. Burwell*, 136 S. Ct. 1557 (2016).

2. Just as the ACLJ had a strong and significant interest in challenging the legality of the Mandate on behalf of its former clients and others when it substantially burdened their religious exercise, the ACLJ has a strong and significant interest in ensuring that the religious protections afforded by the Interim Final Rules are upheld in this legal action.

3. This Court has the "inherent authority to allow *amicus curiae* to participate in proceedings." *Avellino v. Herron*, 991 F. Supp. 730, 732 (E.D. Pa. 1998) (citations omitted). Participation by *amici* "may be advisable where third parties can contribute to a court's understanding." *Harris v. Pemsley*, 820 F.2d 592, 603 (3d Cir. 1987). This Court may therefore grant leave to appear as an *amicus* if the information offered is "timely and useful." *Avellino*, 991 F. Supp. at 732 (citation omitted).

4. Through decades of litigation, the ACLJ has developed an expertise in several areas of constitutional law, especially the First Amendment. The ACLJ respectfully suggests that such expertise will be of benefit to this Court in deciding the merits of the First Amendment's Establishment Clause claim, raised by the Commonwealth in support of its Motion for a Preliminary Injunction.

5. On November 7, 2017, the Court issued an order providing that "[a]ny *amicus curiae* briefs shall be filed no later than November 27, 2017." ECF Doc. 11. The instant motion, filed on said

---

<sup>2</sup> *Gilardi v. United States HHS*, 733 F.3d 1208 (D.C. Cir. 2013); *Korte v. Sebelius*, 735 F.3d 654 (7th Cir. 2013); *O'Brien v. U.S. HHS*, 766 F.3d 862 (8th Cir. 2014); *Am. Pulverizer Co. v. U.S. HHS*, No. 6:12-cv-03459-MDH (W.D. Mo.); *Lindsay v. U.S. HHS*, No. 1:13-cv-01210 (N.D. Ill.); *Bick Holdings, Inc. v. U.S. HHS*, No. 4:13-cv-00462-AGF (E.D. Mo.); *Hartenbower v. U.S. HHS*, No. 1:13-cv-2253 (N.D. Ill.).

date, is timely and will not prejudice either party. Moreover, the attached *amicus curiae* brief is less than half the Court's page-limit for briefs filed in support of a motion.

WHEREFORE, the ACLJ respectfully requests that this Court grant leave to file the attached brief as *amicus curiae*.

Respectfully submitted, this 27th day of November 2017.

Edward L. White III\*  
Erik M. Zimmerman\*  
American Center for Law & Justice  
3001 Plymouth Rd., Ste. 203  
Ann Arbor, MI 48105  
Tel: (734) 680-8003  
Fax: (734) 680-8006  
ewhite@aclj.org  
ezimmerman@aclj.org

s/ Francis J. Manion  
Francis J. Manion (PA Bar 40677)  
Geoffrey R. Surtees\*  
American Center for Law & Justice  
PO Box 60  
New Hope, Kentucky 40052  
Tel. 502-549-7020  
Fax 502-549-5252  
fmanion@aclj.org  
gsurtees@aclj.org

*\*Not admitted in this jurisdiction*

*Counsel for Amicus Curiae, the American Center for  
Law & Justice*

**CERTIFICATE OF SERVICE**

I hereby certify that, on November 27, 2017, a copy of the foregoing document, and all attachments, was electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

DATED this 27th day of November 2017.

/s/ Francis J. Manion  
FRANCIS J. MANION